IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

CIVIL APPLICATION NO.2718 OF 2002

IN

FIRST APPEAL NO.956 OF 2002

M/s.Kelkar and Kelkar ...Applicant

Vs.

Mr.Shripad Narayan Gore & Ors. ...Respondents

Mr.V.G.Mujumdar for the Appellant
Mr.S.G.Deshmukh for Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.

DATED: AUGUST 16, 2004.

P.C.:

1. Rule. Shri Deshmukh waive service for Respondent Nos. 1 and 2. Service on the Respondent No.3 is dispensed with. It is an admitted position that the Appellant has deposited a sum of Rs.25,000/- in this Court as per Section 173 of Motor Vehicles Act. In execution proceedings a sum of Rs.25,000/- has been paid to the Respondent No.1.

2. The challenge in the Appeal is to the Judgment and Award passed by the Motor Accident Claims Tribunal. Since the judgment and Award is in the nature of money decree, same cannot be stayed unless the entire amount due and payable as

per the impugned Judgment and Award is deposited with the Tribunal.

3. Shri Mujumdar learned Counsel for the Appellant submitted that the Respondent Nos. 1 and 2 should not be permitted to withdraw any amount as a sum of Rs.25,000/- has been paid to the Respondent No.1 in execution proceedings. He pointed out that a cheque representing the balance amount due and payable under the impugned Judgment and Award has been handed over to the Respondent No.1 in execution proceedings. He submitted that even if the Respondent Nos.1 and 2 are allowed to withdraw any amount the same shall have to be on furnishing security to the satisfaction of the tribunal.

4. Shri Deshmukh appearing for the Respondent Nos. 1 and 2 stated that the Respondent No.1 has received a sum of Rs.25,000/- in cash in execution of the Award. He stated that the cheque which is given to the Respondent No.1 representing the balance amount due and payable is not encashed and the Respondent Nos. 1 and 2 are ready and willing to give back the said cheque to the Advocate appearing for the Appellant. He submitted that considering the evidence on record and considering the age of the Respondent No.1,

it is necessary that substantial amount be allowed to be withdrawn by the respondent No.1 without furnishing security.

He submitted that before the Tribunal, the involvement in the accident of the vehicle belonging to the Appellant has been proved.

5. Considering the rival submissions and facts of the case Civil Application is disposed of by passing the following order:

i) There will be interim stay in terms of prayer clause (a) of the Civil Application till the final disposal of the Appeal subject to the condition of Applicant/Appellant depositing with the Tribunal the entire amount due and payable as of today as per the impugned Judgment and Award within a period of twelve weeks from today.

ii) The Applicant/Appellant is entitled to withdraw a sum of Rs.25,000/- deposited in this court along with the Appeal. The Applicant/Appellant is also entitled to adjust the sum of Rs.25,000/- paid in cash to the Respondent No.1 in execution proceedings while depositing the amount as per this order.

iii) If the entire amount due and payable is not deposited by the Appellant/Applicant in the Tribunal within the stipulated time, the interim stay granted by this Court shall stand vacated without reference to the court.

iv) After the amount is deposited by the Appellant/Applicant,

the Respondent No.1 will be entitled to withdraw a sum of Rs.25,000/- without furnishing any security. However, before withdrawing the amount the Respondent No.1 will give undertaking to the Tribunal to re-deposit a sum of Rs.25,000/- in the event the Appellant succeeds in Appeal. This amount of Rs.25,000/- is in addition to the amount of Rs.25,000/- which is already paid to the Respondent No.1.

v) The Respondent No.2 will be entitled to withdraw a further sum of Rs.25,000/- without furnishing security but subject to giving an undertaking as provided in clause No.(iv) above.

vi) The rest of the amount deposited by the Appellant/Applicant will be invested by the Tribunal in Fixed Deposit in any nationalised bank and the Fixed Deposit shall be renewed from time to time till the final disposal of the Appeal.

vii) It is made clear that the deposit of the amount by the Appellant/Applicant in the Tribunal and withdrawal thereof by the Respondent No.1 and 2 will be subject to the final result of the Appeal. There will be no order as to costs.

viii) The statement of Shri Deshmukh recorded in Paragraph No.4 is accepted.

ix) Parties and the Tribunal to act upon an ordinary copy of the order duly authenticated by the Court Sheristedar.

Judge.